

Testimony

of

Bob Hesser, Chief Executive Officer, HI Tech Services, Inc.

on

Assessing Federal Small Business Assistance Programs  
for Veterans and Reservists

to

The Senate Committee on Small Business and Entrepreneurship

Wednesday, January 31, 2007  
Russell Senate Office Building  
Washington, D.C.

**Good Morning Chairman Kerry, Ranking Member Senator Snowe, and other Members of the Committee:**

Let me first thank you for the opportunity to come before you today to share my views on the Federal Procurement Program for Veterans. I am an Executive Member of the Task Force for Veterans Entrepreneurship (TFVE). My comments today are my own. Most of my recommendations for legislative changes are part of the Task Force's submission to this committee's staff.

While the framers of PL 106-50 did a good job of setting up the program in 1999 to assist all veterans interested in starting or expanding their own small businesses, it wasn't until the Veterans Benefits Act of 2003 (PL 108-183), Section 308, that a Federal Procurement Program for Veterans was created. Under Section 308, contracting officers were to be given authority to restrict competition or make sole source awards for procurements to service-disabled veteran owned businesses (SDVOBs). Nonetheless, today, the simplified procedures used to sole source and set-aside 8(a) and HUBzone procurements do not exist for SDVOB's.

I believe that the Federal Acquisition Council's and the Small Business Administration's joint efforts to effectuate Section 308 did, in fact, cause greater confusion. They created additional subparts of the Code of Federal Regulations (CFR's) and the Federal Acquisition Regulations (FAR's) that do not reflect what is in PL 108-183.

To encourage greater federal agency participation in the SDVOB procurement program the President issued Executive Order 13-360. The Executive Order did heighten awareness throughout the Federal government including large business contactors.

My entire adult life has involved service to the Federal government. I was U. S. Navy active duty, a Federal Government employee and a government contractor. During my involvement I have learned that a very high percentage of government employees possess a "collective mindset" supporting the "corporate good." They are good people. Government employees working with contractors build business relationships. Some of the relationships last many years. Of course, each Contracting Officer knows the contractor who is timely, the contractor with reasonable prices, and in what action each contractor is at their best. The Contracting Officer contacts the contractor to get what their agency customer needs.

When a new requirement is brought to their attention that is not within the scope of existing contracts the contracting officer wants to use the most efficient, effective and lowest cost means to put a new contract in place. Their customer needs a contract created in order to carry out a mission. If the required product or service can be provided by a small business the contracting officer will first consider the scope of existing small business contracts. Second, they will consider contractors with whom they already work. This includes large business with an existing subcontracting relationship with a small business capable of fulfilling the requirement. Third, they are likely to consider inquiring the GSA Schedule system known as GSA Advantage. They will not consider a service-disabled veteran-owned small business "sole source" or "set-aside." They will work with a SDVOB also certified as an 8(a) or HUBzone small business. Why? Because they can award to the other two without any hassle or additional work and can take credit through double or triple counting for goal accounting.

I have spent thousands of dollars and thousands of hours over the past six years chasing leads, creating new markets, educating government employees on new technology, and trusting that new legislation will end inequities within the procurement system. The inequities still exist.

Several opportunities have been created by our marketing or were identified for us by prospective federal customers. When the customer took the requirement to a contract office the contracting officers have, in every case, found reason for not awarding us a sole-source or not setting it aside for SDSVOB's. All contracts awarded to us have been full-and-open, small business simplified acquisitions, or GSA Delivery Orders. We have three GSA Schedules and are service-disabled veteran-owned small business subcontractors on nine extremely large contracts held by large federal contractors. We have concentrated on opportunities with us being the prime. In most cases, subcontracting work from a large business comes from the small business finding the federal work and using the prime's contract. Some find this best for their business. We do not pay a prime contractor a percentage of our work if we can get a contract of our own.

**I have included a written request for Congress to close loopholes in the GSA schedule process wherein large businesses are allowed to take away business intended for small businesses.**

There are some congressional actions that will streamline the Federal Procurement Program for Veterans. In summary, there are three:

1. Assist the Task Force for Veteran Entrepreneurship and Veteran Service Organizations in changing legislation critically needed so we can move forward.
2. Program oversight is vital. Ensure the Small business Administration (SBA), the Office of Management and Budget (OMB), the General Services Administration (GSA), and other pertinent agencies report to Congress each agency's quarterly actions taken in support of the Federal Procurement Program for Veterans, their compliance with reporting requirements in P.L 106-50, 108-183, etc.
3. Program execution must be simple. If contracting officers are to be held responsible they should be given the authority and not burdened by poor policy.

Thank you and this concludes my testimony.

Robert "Bob" Hesser  
President and Chief Executive Officer  
HI Tech Services, Inc.  
12262 Streamvale Circle  
Herndon, VA 20170  
Office: (703) 318-8819 (Forwards to Cell After 3rd Ring)

<http://www.hits-inc.com>  
<mailto:bhesser@hits-inc.com>

HITS is a Service-Disabled Veteran-Owned Small Business  
2004 SBA Veterans' Small Business Advocate DC District  
Executive Member, Task Force for Veteran Entrepreneurship (TFVE)  
Retired Master Chief Petty Officer (E9), Permanent Disability Retired List

Attachment to Robert Hesser's January 31, 2007 testimony to the "The Senate Committee on Small Business and Entrepreneurship"

This is a request for legislative change to the Small Business Act (15 U.S.C. 644) necessary to right a wrong against small business for many years. For many years the General Services Administration (GSA) has exempted the Small Business Act from Blanket Purchase Agreements and orders placed against GSA Schedule contracts.

I propose that the U. S. Congress close loopholes in the GSA schedule process wherein large businesses are allowed to take away business intended for small businesses.

a. The General Services Administration (GSA) has rules and regulations exempting Federal Acquisition Regulations (FAR), Part 19. FAR Part 19 represents small business procurement regulations for federal government agencies. Part 19 and applicable CFR's are derived from the Small Business Act (15 U.S.C. 644).

b. FAR Part 8, section 8-404, "Use of Federal Supply Schedules" states;

(a) *General.* Parts 13 (except 13.303-2(c)(3)), 14, 15, and 19 (except for the requirement at 19.202-1(e)(1)(iii)) do not apply to BPAs or orders placed against Federal Supply Schedules contracts (but see 8.405-5). BPAs and orders placed against a MAS, using the procedures in this subpart, are considered to be issued using full and open competition (see 6.102(d)(3)). Therefore, when establishing a BPA (as authorized by 13.303-2(c)(3)), or placing orders under Federal Supply Schedule contracts using the procedures of 8.405, ordering activities shall not seek competition outside of the Federal Supply Schedules or synopsise the requirement.

c. FAR Part 19.1404 was created by the FAR Council because of Public Law 108-183.

Public Law 108-183 states:

“(c) Relationship to Other Contracting Preferences.--A procurement may not be made from a source on the basis of a preference provided under subsection (a) or (b) if the procurement would otherwise be made from a different source under section 4124 or 4125 of title 18, United States Code, or the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.).”

FAR Part 19.1404 “Exclusions” states:

“This subpart does not apply to--

- (a) Requirements that can be satisfied through award to--
  - (1) Federal Prison Industries, Inc. (see Subpart 8.6);
  - (2) Javits-Wagner-O'Day Act participating non-profit agencies for the blind or severely disabled (see Subpart 8.7);
- (b) Orders under indefinite delivery contracts (see Subpart 16.5);
- (c) Orders against Federal Supply Schedules (see Subpart 8.4);
- (d) Requirements currently being performed by an 8(a) participant or requirements SBA has accepted for performance under the authority of the 8(a) Program, unless SBA has consented to release the requirements from the 8(a) Program; or
- (e) Requirements for commissary or exchange resale items.”

d. As reflected above FAR Part 19.1404 Exclusions go far beyond the preferences in Public Law 108-183.

There is nothing in Public Law 108-183 or the Small Business Act excluding “orders under indefinite delivery contracts” or “orders against Federal Supply Schedules.” If FAR Subpart 16.5 and 8.4 are not allowed to exempt Part 19 the exclusions in subparagraphs (b) and (c) of FAR Part 19.1404 would not exist.

**RECOMMENDED ACTION:**

Section 15 of the Small Business Act (15 U.S.C. 644), as amended by this Act, is amended by adding at the end the following:

**“(w) There shall be no acquisition, contracting, or procurement policy, regulation, rule or other document exempting requirements of this Act.”**